IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 973 OF 2006

Chandrika Prasad Sahni.... ... ... Petitioner.

Versus

Mr. Nagre D.K. & Others..... ... Respondents.

Mr. A. A. Siddiqui for the Petitioner.

None for the Respondents.

CORAM : V.G. PALSHIKAR, and V.R.KINGAONKAR, JJ.

DATED : 28TH FEBRUARY, 2006.

P.C.:

By this writ petition the petitioner prays for preventing breach of his fundamental rights guaranteed by Article 19 of the Constitution of India which has been violated according to the Petitioner in the following manner.

2. There was a dispute in Navi Mumbai regarding allotment or availability of space for hawking vegetables and similar goods. The matter was litigated and came before this Court in Writ Petition No. 2599 of 2001. It was filed by Navi Mumbai Hawkers and Workers Union and others. The matter was

heard on 26th September, 2001 and by consent of parties an order was made. The consent terms were that the Respondent No.2, Municipal Corporation of Navi Mumbai agreed to demarcate pitches of 4′ x 6′ in hawking plots to all the existing licence holders. The allotment was to be done by the Court Commissioner nominated by the Prothonotary of this Court.

3. Accordingly, list was so prepared and the Petitioner was allotted Pitch No.25 where after paying the necessary charges the Petitioner commenced his business of hawking vegetables. This was the exercise done by the Petitioner of his fundamental right to carry on any trade or profession.

4. After some time, when he peacefully enjoyed his fundamental right, by an illegal act, Officers of the Municipal Corporation took forcible possession of his handcart, removed him from the allotted pitch and orally re-allotted to Respondent No.3. This illegal dispossession and oral re-allotment according to the Petitioner amounts to violation of his fundamental right guaranteed by Article 19 of the Constitution and for which he seeks exercise of extra ordinary jurisdiction of this court conferred under Article 226

of the Constitution.

5. The prayers made read as under:

"(a) That this Honourable Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order, directing the Respondents No.1 & 2, their agents and servants to restore the allotment of the Pitch No.25, Plot No.12-A, Sector 15, Nerul Navi Mumbai, in the interest of justice.

(b) That this Honourable Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order, directing the Respondent No.3, his agents and servants to vacate the Pitch No.25, Plot No.12-A, Sector 15, Nerul Navi Mumbai, in the interest of justice.

(c) Pending the hearing disposal of this Petition, the Respondents, their agents and servants by an order of injunction

from demanding the rent from 03.01.2005 and cancelling the allotment of the said Pitch No.25, Plot No.12-A, Sector 15, Nerul Navi Mumbai, till the disposal of this Petition in the interest of justice.

(d) To pass ad interim order in terms of clause (c) hereinabove in the interest of justice.

(e) For the cost of this petition to the Petitioners.

(f) To grant such other and further reliefs to pass such other and further orders, which this Honourable Court may deem fit and proper in the nature and circumstances of this case and in the interest of justice."

6. Prayer (a) deals with requiring Respondent Nos.1 and 2, their agents and servants to restore the allotment of Pitch No.25 to the Petitioner. This prayer can squarely be made by way of a civil suit

which is an ordinary civil remedy. But exercise of extra ordinary writ jurisdiction is sought for such a prayer. Prayer (b) claims direction against Respondent No.3, who is an individual citizen to vacate Pitch No.25. This prayer can also be effectively made by way of a civil suit. Prayer (c) is a prayer for injunction restraining Municipal Authorities from recovering rent from the Petitioner. An application under Order 39 rules 1 and 2 of the Civil Procedure Code is equally adequate, if not more efficacious remedy for seeking such injunction. Prayer (d) deals with interim order. Prayer (e) seeks costs and prayer (f) is for any other relief.

7. A civil suit for declaration that the action of the Municipal Authority and Respondent No.3 are illegal with the consequential benefits of restoration of possession and injunction from demanding rent, would meet the ends of justice and also protect the fundamental right of the Petition. No case, whatsoever, has been made out in the circumstances for exercise of extra ordinary jurisdiction of this Court under Article 226 of the Constitution. It is a discretionary jurisdiction and in the circumstances narrated above, we see no reason to exercise that

jurisdiction.

8. Petition is, accordingly, dismissed with costs of Rs.250/-.

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